

DECISION

7-12/ 20331
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-206489**DATE:** October 15, 1982**MATTER OF:** Romar Consultants, Inc.**DIGEST:**

1. Protest is denied where the protester alleges that several solicitation requirements are overly restrictive of competition and unreasonable, but the agency establishes that the provisions in question represent its legitimate minimum needs.
2. Evaluation factors are unobjectionable where the agency establishes a reasonable nexus between these factors and the work to be performed under the contract.
3. A solicitation requirement shown by the agency to constitute part of its minimum needs will not be found unreasonable merely because it may necessitate some preaward expenditures by offerors.
4. A solicitation requirement is not objectionable merely because it might be more easily met by the incumbent contractor than by other offerors; a competitive advantage gained by virtue of a firm's incumbency on a similar contract is not an unfair advantage.

Romar Consultants, Inc. protests request for proposals (RFP) No. NCI-CM-27513, issued by the Department of Health and Human Services, National Cancer Institute (NCI), for computerized data and literature search services. Romar contends that the RFP contains several provisions which are overly restrictive of competition and unreasonable. NCI has issued Amendment 0001 in an attempt to satisfy Romar's concerns, but Romar maintains that there remain several material deficiencies which make it impossible for it to prepare a competitive proposal. NCI has declined to further amend the solicitation. We deny the protest.

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Romar initially questions the necessity for two requirements which concern the manner in which offerors are to prepare their proposals, and contends that one of the performance requirements cannot be accomplished. First, Romar considers the requirement that offerors furnish NCI with 25 copies of their technical proposal unreasonable because it places a significant financial burden on small business offerors, and represents a gross deviation from the common agency practice of requiring no more than ten copies. Romar submits that NCI should assume the cost of any additional copies it requires. Second, Romar challenges the RFP requirement that offerors perform a sample literature search for evaluation purposes. Again, Romar believes this requirement imposes an unreasonable burden on offerors, small businesses in particular, and that it is unnecessary since, in its view, NCI can adequately evaluate technical proposals merely by reviewing an outline of the offeror's search strategies. Romar also is concerned that this requirement gives an unfair competitive advantage to the incumbent contractor, which already has developed and refined its search strategy under its current contract. Finally, Romar argues that it is impossible to conduct computer searches by chemical class as required by the RFP's statement of work.

A protester who objects to the requirements in an RFP bears a heavy burden. The contracting agency has the primary responsibility for determining its minimum needs, and for drafting requirements which reflect those needs. Dynalectron Corporation, B-198679, August 11, 1981, 81-2 CPD 115. It is the contracting agency which is most familiar with the conditions under which the services and supplies have been and will be used, and our standard for reviewing protests challenging agency requirements has been fashioned to take this fact into account. Specifically, our Office will not question agency decisions concerning the best methods of accommodating their needs absent clear evidence that those decisions are arbitrary or otherwise unreasonable. Four-Phase Systems, Inc., B-201642, July 22, 1981, 81-2 CPD 56. While agencies should formulate their needs so as to maximize

competition, burdensome requirements which may limit competition are not unreasonable, so long as they reflect the Government's legitimate minimum needs. Educational Media Division, Inc., B-193501, March 27, 1979, 79-1 CPD 204.

We find NCI has adequately established the reasonableness of the requirements challenged here. According to NCI, all 25 copies of the technical proposals will be used in the six month review process; ten will be retained by NCI for internal review while 15 will be distributed for external peer review. We find no basis for requiring NCI to request fewer copies or to absorb the cost of making the needed copies. An RFP requirement shown by the agency to be necessary will not be found unreasonable merely because it may necessitate preaward expenditures by offerors. See Coalition of Higher Education Assistance Organizations; American Collectors Association, Inc., B-203996, B-203996.2, December 23, 1981, 81-2 CPD 490.

The sample literature search is necessary, explains NCI, "to realistically evaluate the quality of the offeror's capabilities." Although NCI offers no more detailed explanation, we find the sample search requirement unobjectionable since it appears to be integral to the process of selecting the most technically qualified offeror. In this regard, we cannot agree with Romar that an offeror's capabilities could be evaluated just as well based on a search strategy outline. While such an outline might be adequate to evaluate how an offeror plans to approach literature searches, it seems clear that a sample search will go one step further and indicate an offeror's ability to implement its strategy. We see no reason why NCI should not be permitted to require offerors to demonstrate this ability. Again, the mere fact that this requirement may prove burdensome to some offerors does not render it unreasonable. Id.

Likewise, the sample search requirement is not objectionable merely because it might be more easily

met by the incumbent contractor than by Romar and other offerors. We consistently have held that a competitive advantage which a firm might enjoy by virtue of its incumbency on a similar contract is not unfair, so long as it is not the result of preferred treatment or other unfair Government action. An agency therefore need not attempt to equalize competition by eliminating the advantage. Boston Pneumatics, Inc., 56 Comp. Gen. 689, 691 (1977), 77-1 CPD 416; Dynalelectron Corporation, supra.

Romar believes that no contractor can have the capability to search files by chemical classes "because neither automated data bases nor printed abstract/index bulletins are designed to be searched by chemical class." In any event, it argues, "practically nothing would be retrieved by searching on chemical classes alone." NCI responds that, in fact, there are available methods for searching by chemical classes, and that such searches provide much useful information. In addition, NCI states that an offeror's awareness of methods for conducting this kind of search was "an evaluable factor" and "would indicate a knowledge of the state of the art." As stated above, we will question an agency's stated requirements only where it is shown by clear evidence that these requirements are unreasonable. Four-Phase Systems, Inc., supra. Romar's mere disagreement with NCI over whether searches by chemical classes are feasible or worthwhile is not sufficient to establish that this requirement is unreasonable. See Stacor Corporation, B-204364.2, January 8, 1982, 82-1 CPD 29. We therefore have no basis upon which to object to this requirement.

Romar next argues that several of the factors to be evaluated under the RFP are unnecessary for performing the contract and thus should be eliminated as being overly restrictive. Romar maintains that NCI should not evaluate the availability of in-house consultation and support staff since out-of-house consultants will be adequate for this purpose. Romar also sees no need to evaluate the "scientific accomplishments" of the principal investigator so long as other proposed personnel are shown to be accomplished in their fields.

NCI responds that evaluation of in-house capability will aid in determining whether the offeror possesses sufficient organizational "depth and experience" to deal with scientific and technical questions which are likely to arise during performance of the contract. Similarly, NCI states that this project calls for scientific judgment on the part of the principal investigator and that scientific accomplishments are useful in evaluating the extent of such judgment.

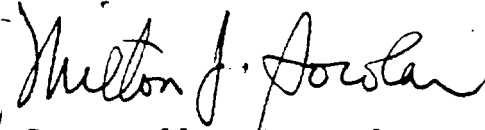
As is the case with agency requirements generally, the selection of appropriate evaluation factors is primarily for consideration by the contracting agency. Our Office will not substitute its judgment for that of the agency unless the protester clearly shows that the factors were selected arbitrarily. Southwest Marine, Inc., B-204136, July 20, 1982, 82-2 CPD 60. Romar has not met this burden. We find that NCI has established a reasonable nexus between the evaluation factors challenged by Romar and the work to be performed under the contract. That is, in view of NCI's explanation, we cannot conclude that in-house support and the scientific accomplishments of the principal investigator would have no bearing on the satisfactory performance of the contract, and thus cannot object to NCI's consideration of these factors.

Romar also complains because the RFP requires that offerors' proposed computer facilities and work space be "adequate," but fails to set forth any specific standards for judging what will be considered adequate. NCI claims it is not feasible to establish firm standards here since any of several computer systems could be used in performing the required tasks, and the precise amount of work space which would be adequate depends on the system proposed. We find these evaluation factors sufficient when considered in light of the RFP as a whole. NCI essentially defined its requirements for computer facilities and work space by providing offerors with a detailed and comprehensive description of the work to be performed. Offerors were free to propose any system which could handle the described work, and we think it was sufficiently clear from the RFP that NCI would consider a system adequate if it could in fact perform that work. Similarly, we think it was fairly clear that the adequacy of an offeror's work space

would depend on such obvious considerations as whether the space could accommodate the proposed computer system as well as the personnel and materials necessary to perform the contract.

Romar cites several other provisions which it believes are unclear or overly restrictive. Many of these provisions concern NCI's computer requirements. We have examined all of these provisions and conclude that they set forth NCI's needs with sufficient clarity. We think it is clear, for example, that the contractor will be required to form a data base using its own computer programmers and equipment, without any assistance from NCI. In our opinion, Romar has not shown any of these provisions to be unnecessary or otherwise unreasonable.

The protest is denied.

for 
Comptroller General
of the United States